



ROSEN GOLDBERG

LAW FIRM & REALTY GROUP

File No. CV-21-00660056-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

BETWEEN:

**DORR CAPITAL CORPORATION,
COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

-and-

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C.1985 c. B-3, as amended

FOURTH REPORT OF ROSEN GOLDBERG INC.

August 20, 2021

I INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed as non-possessory interim receiver (in such capacity, the “**Interim Receiver**”) of certain real property of the Respondent municipally known as 305 Mill Street, in Angus, Ontario (the “**Real Property**”) pursuant to section 47 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the Appointment Order is attached as **Appendix “A”**.



II TERMS OF REFERENCE

2. In preparing this Fourth Report, the Interim Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Third Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Interim Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Interim Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.

III PURPOSE OF THIS REPORT

3. The purpose of this Third Report is to:
 - (a) provide the Court with information on the current status of the Real Property;
 - (b) report on and seek approval of the Interim Receiver’s activities, and its proposed activities; and
 - (c) seek approval of the Interim Receiver’s interim statement of receipts and disbursements.

IV BACKGROUND

4. The Real Property comprises a 5.3 acre lot located on a main thoroughfare in the



neighbourhood of Angus in the Township of Essa.

5. The land is partially improved, and is being developed into a 45,600 square foot mixed-use office and retail plaza.
6. At the date of the Interim Receiver's appointment, the first phase of construction ("**Phase 1**"), being construction of a gas station, convenience store, and three other fully leased buildings, was nearly complete. Of the three leased buildings, one is to be occupied by Starbucks and Mucho Burrito restaurants. The other two buildings are to be occupied as standalone KFC and A&W restaurants. As of the date of the Interim Receiver's appointment, construction of Phase 1 was nearly complete, though the gas station required more work to complete than the other three buildings.
7. The second phase of construction ("**Phase 2**") is not yet fully planned, though work has commenced. Completed improvements in respect of Phase 2 are limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants. Planners and consultants have been retained in respect of seeking site plan approval.
8. The Interim Receiver's appointment was sought, in part, given that construction on Phase 1 had been halted because DUCA Financial Services Credit Union Ltd. ("**DUCA**"), the first-ranking secured creditor, had ceased funding under its construction loan, and made demand in for repayment in full of that loan.
9. The Interim Receiver's primary mandate in this administration is to ensure that construction of Phase 1 resumes and is completed, although the Appointment Order prohibits the Interim Receiver from taking possession of the Real Property without further Order of this Honourable Court.



10. Pursuant to the endorsement of the Honourable Mr. Justice Pattillo dated August 9, 2021, the Interim Receiver and other stakeholders were to return to this Honourable Court on August 23, 2021, to provide a further status update at a Chambers' Appointment scheduled for 10:00 a.m.

V INTERIM RECEIVER'S ACTIVITIES TO DATE

11. Since the date of its last report dated August 9, 2021, the Interim Receiver has undertaken the following activities:
 - Reviewing and processing payment requests;
 - Dealing with contactors and other suppliers on an ongoing basis;
 - Attendance at site on several occasions;
 - Dealing with Petromaxx Petroleum Contractors Ltd. ("**Petromaxx**"), the project manager and supervisor, on an ongoing basis in respect of all matters relating to the Phase 1 construction;
 - Ongoing consultations with the construction professional retained by the Interim Receiver;
 - Communications with project engineer;
 - Ongoing consultations with legal counsel;
 - Communications with tenants on an ongoing basis;
 - Communications with planners re status of various development matters;
 - Ongoing communications with the Real Property's first and second-ranking secured lenders;
 - Ongoing communications with the Interim Receiver's lender;
 - Communicating with other stakeholders; and



- Dealing with banking and bookkeeping.

VI PHASE 1 CONSTRUCTION

Site Services

12. As reported in the Interim Receiver's first report dated May 11, 2021 (the "**First Report**"), the second report dated June 24, 2021 (the "**Second Report**") and the third report dated August 5, 2021 (the "**Third Report**"), the installation of a sanitary pumping station and a water main were required be undertaken immediately in order to progress with the completion of Phase 1. Copies of the First Report, the Second Report and the Third Report are attached hereto as **Appendices "B"**, **"C"** and **Appendix "D"**, respectively. The water main installation has been completed, however, as a result of delays caused by the contractor retained by Petromaxx (who we understand was attempting to connect the water main in the wrong location), the water main has yet to be connected to the town water supply. A replacement contractor has been retained and the water will be connected imminently.
13. Surface works, including installing granular base, curbs, sidewalks and the asphalt surface, have been delayed. In order to complete this work it was necessary to obtain a topographical report and have it reviewed by the project engineer, the results which were received recently. As a result it was determined that certain curbs, which were previously installed, were placed incorrectly and will have to be removed and reinstalled. Additionally, the base asphalt, which was installed in December, was unacceptable and was placed on sub-grade that was not previously tested and will have to be remediated. A contractor has been retained to complete this work. Lastly, it was discovered that the sanitary lines that were previously installed by Petromaxx, were not flushed and no video or reports were obtained. As a result there was an abnormal amount of debris and sediment in these lines, and the extensive



flushing required created additional cost and delay.

14. These delays and additional costs appear to be as a result of no ongoing inspections and the lack of involvement of the project engineer on an ongoing basis. Additionally, the project manager has attempted to manage the construction project from off-site and as a result there was insufficient on-site supervision of sub-contractors and trades. This void has resulted in the Interim Receiver and the construction professional it retained, to be contacted directly by trades and tenants, requesting updates and timelines to completion.
15. The project, despite the delays, continues to move forward towards Phase 1 completion and obtaining an occupancy permit, as new contractors have been retained to complete the required work.

Restaurant Buildings

16. We understand that KFC, A&W and Starbucks have completed the interior work in their respective buildings and will commence commissioning of their equipment upon completion of the water and sanitary connections.
17. We further understand that Mucho Burrito has yet to commence its tenant improvements. We are advised that a matter related to an amendment to the Mucho Burrito lease has yet to be finalized, but that Mucho Burrito does intend to commence improvements once the matter is resolved.

Gas Station and Convenience Store

18. The exterior of the convenience store is mostly complete. Construction of the interior work has not yet commenced. The curbs and sidewalks must be completed. The remaining construction related to the gas station and installation of the equipment will not be completed



until there is an agreement with a fuel supplier in place.

Completion of Phase 1 work

19. On the basis of the work that has been completed since the Interim Receiver's appointment, and the expected work schedule, the Interim Receiver understands that all Phase 1 work will be completed within four weeks.
20. The costs to complete that was provided at the time of our appointment was significantly inaccurate. We estimate that we will require an additional \$250,000 in excess of the original borrowings to complete the work. This does not include the remaining construction of the gas station, which includes, *inter alia*, sourcing and installing the pumps and other equipment, sourcing and constructing the canopy for the gas bar and completing the convenience store.

VII INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

21. The Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to August 19, 2021 is attached as **Appendix "E"**.

VIII FURTHER ACTIONS OF THE INTERIM RECEIVER

22. The Interim Receiver will continue to attend at the construction site as required to monitor construction activities and deal with suppliers and other stakeholders on an ongoing basis.



ROSEN GOLDBERG

REAL ESTATE & RECEIVERSHIP

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IX RECOMMENDATION

23. As described above, there is still work required to complete Phase 1. For this reason, the Interim Receiver respectfully requests that the Court make an Order:

- (a) approving the Interim Receiver's actions as described in this Fourth Report;
- (b) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to August 19, 2021; and
- (c) for such further and other relief as counsel may advise and this Court may permit.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 20th day of August 2021.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED NON-POSSESSORY INTERIM RECEIVER OF
CERTAIN REAL PROPERTY OF MILL STREET VENTURES GP LTD.;
NOT IN A PERSONAL OR CORPORATE CAPACITY**


